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NO. 82-1614

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

BLAZER CORPORATION,

Petitioner,

v.

NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, DAVID A. WERBLIN, CHARLES SERRAINO, ADRIAN M. FOLEY, JR., GEORGE F. KUGLER, JR., AUBREY C. LEWIS, JOSEPH M. McCRANE and "JOHN DOES," said names being fictitious,

Respondents.

BRIEF OF INDIVIDUAL RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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Question Presented

Whether the Court of Appeals for the Third Circuit erred in affirming the dismissal of the complaint for failure to state a cause of action under the Civil Rights Act of 1871, 42 U.S.C. § 1983?

The Parties

Petitioner Blazer Corporation is a corporation of the State of New Jersey currently located and operating at 700 21st Avenue, Paterson, New Jersey. Prior to August 15, 1974 Blazer was a tenant leasing the land and premises located at 400 Paterson Plank Road, East Rutherford, New Jersey, where Blazer was engaged in the manufacture of air conditioning systems. The owner of the land and buildings which Blazer leased, and which form the basis for this law suit, is not a party to this suit.[1]

The respondent New Jersey Sports and Exposition Authority (hereinafter, the "Authority") is a body politic and corporate of the State of New Jersey established in the Department of Community Affairs having its principal office at the "Sports Complex" in East Rutherford, New Jersey. The Authority was created by State legislation enacted in May of 1971. N.J.S.A. 5:10-1, *et seq.* L. 1971, c. 137. Respondents Werblin, Serraino, Foley, Kugler, Lewis and McCrane, who are named in their individual capacity, were members of the Authority.

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[1] While the owner of the land and building, Blazer Realty Corporation, is technically not a party to this suit, brought by Blazer Corporation, the two corporations are wholly owned and controlled by the same persons and are, for all intents and purposes, one company. Until his recent death, Benjamin Blazer owned both corporations. References in this brief to "Blazer" shall mean only Blazer Corp., not the Realty Corp., except where otherwise indicated in the text.

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Opinions and Judgments Below

The opinion of the Court of Appeals for the Third Circuit, entered on December 2, 1982, is unreported and is reproduced in the appendix attached to petitioner's petition (Pa36 to Pa38).[2] The Order of the Court of Appeals for the Third Circuit denying petitioner's motion for a rehearing *en banc* was issued on Decemeber 29, 1982, is unreported, and is reproduced in the appendix to the petitioner's petition (Pa39 to Pa40). The opinion of the District Court for the District of New Jersey dismissing the suit against the respondent Authority was rendered on November 16, 1981, was made into an Order on December 7, 1981, is unreported, and that opinion is reproduced in the appendix to petitioner's petition (Pa16 to Pa25). The District Court for the District of New Jersey rendered an opinion dismissing the suit against respondents Werblin, Serraino, Foley, Kugler, Lewis and McCrane on March 1, 1982. That opinion was made into an Order on March 15, 1982, is unreported, and is reproduced in the appendix to petitioner's petition (Pa26 to Pa35).

Jurisdiction

The petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1254(1).

Constitutional Provisions, Statutes and Regulations Involved

The petitioner alleges a violation of its rights under the Constitution of the United States and under the Civil Rights Act of 1871, 42 U.S.C. § 1983, based upon allegations that the respondents failed to comply with the provisions in the New Jersey Eminent Domain Act of 1971, N.J.S.A. 20:3-1 *et seq.*, the New Jersey Relocation Law of 1967, N.J.S.A. 52:31B-1 *et seq.*, and the New Jersey

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[2] "Pa" refers to the appendix attached to petitioner's petition.

Relocation Act of 1971, N.J.S.A. 20:4-1 *et seq.* Specifically, the petitioner alleges a violation of the Constitutional guarantees of due process and equal protection as contained in the Fourteenth Amendment, which provides, in pertinent part, as follows:

> "Section 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, wthout due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The petitioner also alleges a violation of its rights under the Civil Rights Act of 1871, 42 U.S.C. § 1983. That statute is set forth in this appendix to the petitioner's petition (Pa12). The state statutes involved are set forth in the appendix to petitioner's petition (Pa1 to Pa11).

Statement of the Case

In 1971 and 1972, pursuant to the directive contained in N.J.S.A. 5:10-6, the Authority commenced the planning of the construction of the Sports Complex. Entailed in this planning was a determination of the property needed for the Sports Complex. Blazer was located on land which the Authority concluded was necessary for the project. The Authority is authorized by statute to acquire land and other property by the power of emiment domain. N.J.S.A. 5:10-5(m). By letter dated June 12, 1972 the Authority informed the owner of the property, Blazer Realty Corp., that, pursuant to statute, the Authority's appraisers, Jackson-Cross Company, would be making an inspection of the property. In the summer of 1972 the representatives of Jackson-Cross has numerous contacts with Blazer Realty Corp. regarding inspection of the premises.

On February 28, 1973, also pursuant to statute, the Authority made a written offer to acquire the subject property. That offer was rejected and on May 20, 1973, in accordance with N.J.S.A. 20:3-1 *et seq.*, the Authority filed a Complaint in Condemnation and Declaration of Taking on the Blazer property. Simultaneously therewith, the Authority deposited $1,115,000.00 with the Clerk of the Superior Court of the State of New Jersey pursuant to an Order for Payment into Court. On August 22, 1973, pursuant to an Amendment to Declaration of Taking and Order for Payment into Court, the Authority deposited an additional $214,395.00 with the Clerk of the Superior Court of New Jersey, for a total of $1,329,395.00. On March 20, 1973 the Authority filed a Notice of Filing of Declaration of Taking, Notice of Making Deposit and Demand for Possession.

The Authority then filed a Notice of Motion returnable July 5, 1973, seeking an order requiring Blazer and the owner of the land and buildings to vacate the property and premises by November 1, 1973. Counsel for both Blazer corporations filed a motion, also returnable July 5, 1973, seeking to withdraw the monies deposited in the Superior Court Trust Fund. On November 12, 1973, after numerous conferences between counsel and court, the Superior Court of New Jersey, per Judge Theodore W. Trautwein, entered an Order for Withdrawal of all monies deposited (R569 to R574).[3] Significantly, this Order was consented to in writing by all parties, including Blazer's owner, Benjamin Blazer, and its then attorney, Arthur Greenbaum (R574). In paragraph 12 of this Order it states:

> "The defendant Blazer Corporation (tenant in possession) having specifically agreed to vacate all lands and premises which they presently occupy and which are the subject of these proceedings no later than February 1, 1974, said date shall not be extended

[3] "R569" refers to the page in the appendix submitted by petitioner to the Court of Appeals for the Third Circuit.

> without consent of the [Authority], and said [Blazer Corp.] shall vacate said lands and premises on or before said date in the absence of such consent."

By letter dated December 12, 1973 the Authority consented to allow Blazer to remain in possession of the subject premises until May 1, 1974 in accordance with the terms provided for in the Order for Withdrawal dated November 12, 1979 (R575). By letter dated April 23, 1974 the Authority granted an additional extension until June 1, 1974 (R567). Nevertheless, the Authority was required to move before the Superior Court of New Jersey on June 11, 1974 for an Order declaring Blazer to be in violation of the Order of November 12, 1973, as modified. On June 20, 1974 Judge Trautwein entered an Order declaring Blazer to be in violation of the Order of November 12, 1973, as modified (R577 to R579). Further, the June 20, 1974 Order required Blazer to vacate its rear building by June 24, 1974 and its front office building by July 1, 1974; in the event of noncompliance, the Sheriff of Bergen County was to take the necessary steps to guarantee possession to the Authority. Finally, the Order of June 20, 1974 established per diem fines if the Order of the Court was not followed.

Meanwhile, in April of 1973 the Authority entered into an agreement with the New Jeresy Department of Transportation (hereinafter "DOT") to formulate and implement a relocation assistance plan on behalf of the Authority (R447 to R452). In accordance with this agreement, DOT did develop and effectuate a relocation plan (R480 to R567). Also in accordance with the interagency agreement, DOT provided four experienced full time relocation officers and a secretary, with additional staff as needed (R582, ¶12). These relocation officers were located in an office on the Sports Complex site in East Rutherford (R582, ¶2).

The relocation officers assigned to this project immediately commenced personal contact with the displacees. The officer assigned to Blazer, John Racanelli, made initial contact with Blazer's owner, Benjamin Blazer, in May 1973

(R583, ¶4; R33, ¶4). As Racanelli recalls, he met with Benjamin Blazer in May 1973 for several hours and explained the relocation process and handed Mr. Blazer a Relocation Assistance Handbook (R33, ¶4; R583, ¶4; R559 to R567). Racanelli also met that month with Mr. Arthur Greenbaum, Blazer's attorney, and explained the procedures to him (R33, ¶4; R582, ¶4). In both his conversation with Benjamin Blazer and with Arthur Greenbaum, Racanelli offered his assistance and informed them that in order to help he would need access to the Blazer premises to assess the requirements of the move and of a new location (R33 to R34; R583 to R585).

The relocation officers were required to keep log sheets of all calls. Racanelli's call sheets reveal approximately 30 contacts, or efforts to contact, Benjamin Blazer and/or the attorney, Greenbaum (R588 to R605. Many other contacts were made, or attempted, with various plant managers or supervisors of Blazer. Racanelli's entries indicate that from May to August 1973 he explained the relocation process to Mr. Blazer and Mr. Greenbaum (R588). From August 1973 through June 1974 Racanelli made repeated efforts to obtain the information necessary in order to assist Blazer in finding a new site, but Racanelli was never allowed sufficient access to the Blazer plant so as to assess its physical needs for a new facility or to provide the requisite data to movers (R588 to R594).

Benjamin Blazer's reluctance to participate in the relocation process may be explained by the position he took in the state court proceedings before Judge Trautwein, where Mr. Blazer indicated his belief that the Sports Complex would not receive funding (R34, ¶6; R584, ¶5). However, by January 1974 it became clear that the Sports Complex would be fully financed. In February 1974 Benjamin Blazer advised Racanelli that Blazer was considering building a new facility elsewhere and since that would take at least six months, moving estimates were not yet necessary (R590). This notion was repeated to Racanelli by Mr. Blazer on March 22, 1974, despite Racanelli and Green-

baum having previously discussed the then existing court order directing Blazer to vacate the premises by May 1, 1974 (R590). By April 1974 Racanelli, frustrated by his inability to gain access to the Blazer premises, called the Authority's General Counsel to intercede in his effort (R592).

On May 22, 1974 Racanelli was finally able to meet with Blazer representatives and to discuss the type of machinery which would have to be moved (R592). On June 14, 1974 Blazer advised Racanelli that two relocation sites were under consideration but he refused to provide Racanelli with addresses (R594). On June 19, 1974 Racanelli and Blazer personnel went to a site selected by Blazer for relocation: 100 Orchard Street, Hackensack (R594). The Blazer personnel advised Racanelli that the only matter not completed was that Mr. Blazer had not yet signed the lease, which was sitting on his desk (R594; R596). Blazer personnel advised the Authority that the company needed some additional time. The Sports Complex engineers, by letter of June 21, 1974, informed the Authority that Blazer could remain in possession until August 15, 1974, but that Blazer's presence on the site after that date would cause serious delays and entail substantial additional construction expenses (R606 to R607). Thereafter, on July 16, 1974, Judge Trautwein entered an Amendment to the Order to Vacate Premises (R608 to R610). Paragraph 1 of the July 16, 1974 Order amended paragraph 2 of the Order of June 20, 1974 by requiring Blazer to vacate the premises on or before August 15, 1974. Paragraph 2 of the Order of July 16, 1974 stated:

> "The plaintiff [Authority] may enter into possession of the said land and premises on August 15, 1974 and commence demolition of the building and other improvements thereon without further Order of this Court."

On July 16, 1974 two moving estimates were given by Blazer personnel to Racanelli but were immediately re-

turned as lacking necessary information (R594). On July 26, 1974 Racanelli was told by Blazer representatives to pick up two moving estimates (R596). They repeated that the leases were still on Mr. Blazer's desk awaiting his signature. By August 1, 1974 three moving estimates were picked up by Racanelli and hand delivered to Trenton for review (R596). The next day the Blazer personnel again advised Racanelli that the lease was awaiting Mr. Blazer's signature (R596). This information was repeated to Racanelli several times during the next week (R596). On August 12, 1974 the amount of $208,210.00—the lowest estimate—was authorized for the move to 100 Orchard Street, Hackensack (R586a, ¶9). This authorization letter was hand delivered by Racanelli to Blazer, where Racanelli was again informed that Mr. Blazer—who, it turned out, was vacationing in Florida—had not yet signed the lease for the facility at that address (R596). Nonetheless, the Blazer personnel selected a mover and arranged for a move, to commence on August 14, 1974 (R598). Racanelli met with the movers on August 13, 1974 at the Blazer premises to discuss the move (R598). The loading of equipment and machinery onto trucks began on August 14, 1974. When the movers—and Blazer's employees—showed up at the Blazer premises on August 15, 1974 they were confronted with locked gates and a sign declaring that Blazer had filed for bankruptcy (R598).

On August 16, 1974 Blazer voluntarily filed a Petition for Reorganization under Chapter XI of the Bankruptcy Act. As part of that proceeding Blazer obtained an Order appointing a Receiver (R132 to R135). Part of said Order imposed restraints against the Authority in connection with the move. The Authority moved to dissolve the restraints, and on August 27, 1974 Consent Orders were entered in the Chapter XI proceeding and in the state court condemnation proceeding, both of which required the two Blazer corporations to vacate the subject premises by 5:00 p.m. on September 3, 1974. The Blazer corporations finally vacated the subject property on September 5, 1974. The machinery was moved to and stored in the mover's ware-

house, at an additional cost to the Authority of $108,000.00. At no time did the Sheriff evict Blazer from its premises. Blazer is now operating in Paterson, New Jersey. The condemnation suit in Superior Court of New Jersey, which was previously placed on the inactive list at the request of Blazer, was recently settled.[4]

On August 13, 1980, nearly six years to the day from the day the movers appeared at its gates, Blazer filed this suit under 42 U.S.C. § 1983. On September 17, 1981 Blazer moved for partial summary judgment against all respondents. On October 8, 1981 the individual respondents cross-moved for summary judgment, asserting, *inter alia,* that the complaint failed to show a violation of any federal rights, failed to allege wrongdoing by the named individuals, and failed to pierce the qualified immunity protecting them as state officials. On October 16, 1981 the Authority cross-moved for summary judgment, alleging that the suit was untimely as beyond the two-year filing period contained in the New Jersey Tort Claims Act (N.J.S.A. 59:8-8).

On November 16, 1981 the District Court rendered a decision granting the Authority's cross-motion to dismiss because Blazer's complaint was untimely but denying without prejudice the individual respondents' motion (Pa16 to Pa25). Explaining its decision, the District Court stated that because § 1983 does not contain its own statute of limitations, a federal court must apply the statute of limitations which a state court would apply had a similar suit been brought in that state's own courts (Pa-9). Reviewing the factors which the Court of Appeals for the Third Circuit has identified as relevant in that determination, the District Court concluded that Blazer's allegations against the Authority were in the nature of a tort suit against a public entity (Pa20). The District Court then observed that both state and federal court decisions in New Jersey deal-

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[4] Pursuant to the settlement, Blazer received $635,000 in addition to the $1,329,395 it had withdrawn from the Superior Court Trust Fund in November 1973, for a total of $1,964,550.

ing with federal civil rights suits against public entities have applied the two-year statute of limitations contained in the New Jersey Tort Claims Act, N.J.S.A. 59:8-8 (Pa22). The District Court thus concluded that the suit against the Authority which was filed six years after the cause of action accrued, was untimely and must be dismissed. However, because the statute of limitations in the New Jersey Tort Claims Act applies only to public entities and not to public officials, the District Court determined that the six-year limit contained in N.J.S.A. 2A:14-1, the New Jersey law governing other tort suits, was applicable to the individual respondents (Pa23). In reaching this conclusion the District Court followed decisions of the New Jersey state courts which, in federal civil rights suits against both public entities and public officials, applied the two-year limit to the entity and the six-year limit to the officials.

Though the District Court viewed the suit against the individual respondents as timely, the District Judge expressed concern that the complaint failed to allege acts or omissions by the individual respondents which would suffice in a § 1983 suit to render them liable (R805 to R806). Cautioning Blazer's attorney that liability in § 1983 action cannot be based on the doctrine of *respondeat superior,* the District Judge permitted Blazer to amend its complaint against the individuals to state with greater specificity, if it could, what wrongful acts the individual respondents committed (Pa24 to Pa25).

On December 21, 1981 Blazer moved to have the decision dismissing the suit against the Authority reconsidered or certified as a final judgment (R811 to R813). This motion was denied by the District Court on January 18, 1982 (R875 to R889). On January 6, 1982 Blazer filed an amended complaint (R830 to R873). In the amended complaint Blazer sought to make more specific allegations of wrongdoing by the individual respondents. However, the charges in the amended complaint reveal very little in the form of concrete additions to the original complaint. The allegations in the amended complaint against respondents

Serraino, Foley, Kugler, Lewis and McCrane are identical and aver guilt based upon the following:

1) each respondent was a member of the Authority pursuant to N.J.S.A. 5:10-4(b);

2) each, because of his membership on the Authority, must be deemed to have had knowledge that the purpose of the Authority was to acquire the land necessary for development of the Sports Complex and each should have known the provisions of the applicable state relocation laws;

3) each was under a duty to comply with those relocation laws, including the duty to appoint officials to formulate and effectuate a relocation plan and to insure that the Chairman of the Authority (i.e. respondent Werblin) sign the relocation plan;

4) each supposedly possessed direct and/or constructive knowledge of the "unique circumstances" of Blazer's business;

5) each unlawfully delegated his statutory responsibilities to effectuate a relocation plan to the New Jersey Department of Transportation and then, as an Authority member, failed to "oversee, direct" or otherwise monitor the actions of the Department of Transportation (R846 to R848; R851 to R853; R856 to R858; R862 to R864; R867 to R869).

As a consequence of those failures to exercise ultimate authority, each is accused of having caused the following:

1) each allegedly authorized the Authority to obtain court orders to evict Blazer;

2) each allegedly caused the eviction of Blazer without making available to Blazer relocation expenses as a condition precedent to eviction or advising it of the availability of advance payment for expenses;

3) each allegedly failed to inform Blazer of specific relocation benefits available to it and failed to assist it

in obtaining relocation assistance and a new situs for its factory;

4) the failure of each individual respondent to fulfill his obligations under the law caused the economic destruction of Blazer's business, in violation of due process and equal protection guarantees in the New Jersey and United States Constitutions (R848 to R850; R853 to R855; R858 to R861; R864 to R866; R869 to R871).

As for repsondent Werblin, who was Chairman of the Authority at the time, Blazer added the allegation that he failed to sign a form certifying the relocation plan (R843).

On January 26, 1982, the individual respondents again moved for summary judgment, contending, *inter alia*, that Blazer failed to show a violation of federal rights and that Blazer failed to allege acts attributable to the respondents which could form the basis for liability under § 1983. Blazer cross-moved for summary judgment and also moved to have Judge Ackerman recuse himself for having allegedly shown prejudice in the January 18, 1982 proceeding in which Judge Ackerman denied Blazer's motion to reconsider or certify the dismissal of the suit against the Authority.

On March 1, 1982 the District Court issued its decision denying Blazer's motion for summary judgment and granting the individual respondents' motion to dismiss. The District Court commenced its analysis by noting that, under Supreme Court and Third Circuit decisions, a person may be found liable under § 1983 only for his "own conduct or participation in a pattern of violation by virtue of knowledge, acquiescence, support and encouragement" (R945-11 to 16). Viewing the facts most favorably to Blazer, the District Court found: that Blazer received a relocation pamphlet which failed to include all requisite information; that Blazer was not provided with new relocation sites or technical assistance; that the relocation plan (called a

Workable Relocation Assistance Plan or WRAP) was never certified and did not contain an eviction policy; that all of the acts of which Blazer complains were performed or committed by employees or agents of the Authority; that the individual respondents are essentially a Board of Trustees for the Authority; and that, apart from the failure of Werblin to sign a form, all of the allegations made against the individual respondents consist of the assertion that they had, but failed to exercise, ultimate responsibility to guarantee that their employees or agents complied with every provision of the state relocation laws and regulations (R946 to R947). The District Court characterized the allegations in the amended complaint as an effort by Blazer to find the individual respondents liable on the doctrine of *respondeat superior* (R947). However, as that doctrine does not pertain in a § 1983 suit, the District Court concluded that the case against the individual respondents must be dismissed (R947 to R948).

Regarding the allegations that the respondents failed to give Blazer 90-day written notice, failed to include an eviction plan in its WRAP, and failed to certify the WRAP, the District Court concluded that the various state court orders directing dispossession constituted sufficient notice (especially as Blazer was on notice for more than nine months that it was to be dispossessed on a date certain); that the Authority lawfully delegated to DOT, under N.J.S.A. 20:4-11, the responsibility to devise and implement a satisfactory relocation plan and that the plan's failure to include an eviction policy cannot be the basis for liability of these individual respondents; and that respondent Werblin's failure to certify the WRAP was merely a procedural defect which did not affect the actual development and implementation of a relocation plan and therefore does not give rise to liability under § 1983 (citing *United States* v. *Jiles*, 658 F.2d. 194 (3rd Cir. 1981) (R948 to R954). Despite granting the individual respondents' motion for summary judgment on March 1, 1982, the District Court denied their motion for attorneys' fees, made under 42 U.S.C. § 1988 (R954 to R955).

On March 15, 1982 the District Court issued its Order reflecting its decision of March 1, 1982 denying Blazer's motion for summary judgment and granting the individual respondents' motion for summary judgment (R956 to R957). The petitioner then appealed to the Court of Appeals for the Third Circuit, complaining that the District Court erred in applying the two-year statute of limitation in the New Jersey Tort Claims Act to the Authority and in dismissing the suit against the individual respondents. In a two sentence judgment the Third Circuit affirmed the District Court decision. The Third Circuit's decision, in its entirety, is as follows:

> "Blazer Corporation appeals from a final order granting summary judgment against it on its Section 1983 complaint against the New Jersey Sports and Exposition Authority and certain of its officials. Since the complaint fails to state a cause of action of violation of that section, it is
>
> ORDERED, ADJUGED and DECREED that the judgment be and is hereby affirmed.
>
> Costs are taxed in favor of appellees."

Pa37 to Pa38).

On December 29, 1982 the Third Circuit denied Blazer's request for a rehearing *en banc* (Pa39 to Pa40).

Summary of Argument[5]

The petitioner asks that this Court grant a writ of certiorari because of an alleged conflict in the circuit courts regarding the most analogous state statute of limitations

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[5] The Authority and the individual respondents have been and remain represented by separate counsel. Because the dismissal of the suit as untimely involved only the Authority, the individual respondents will not address that aspect of the case other than to note that the Third Circuit never reached that issue. The substantive argument on the timeliness issue is fully argued in the Authority's brief in opposition to the petition.

and because of an alleged misapplication by the courts below of the doctrine of *respondeat superior* in a § 1983 context. The individual respondents respectfully submit that the decisions below do not present this Court with any basis or need for review or correction. The petitioner has presented a prodigiously assembled but entirely irrelevant argument which fundamentally ignores an unavoidable obstacle, to wit: the Third Circuit's two-sentence affirmance simply does not embroil that court in a conflict with its sister circuits and does not delineate a novel interpretation of *respondeat superior* in the context of a § 1983 suit.

As the respondent Authority points out in its brief in opposition to the petition, the Third Circuit decision is absolutely silent on the applicable state statute of limitation to be adopted by a federal court in a § 1983 case. The reason for the Third Circuit's silence on that topic is hardly obscure. That court was of the opinion that the petitioner's complaint does not set forth a cause of action at all. Because of the absence of any actionable misconduct in the complaint itself, the Third Circuit sagely avoided reaching the "limitation" issue heatedly urged by the petitioner. This Court should similarly avoid addressing an issue which is not necessary to the disposition of the litigation.

Nor did the Third Circuit explicate or approve of a new interpretation of *respondeat superior*. This petitioner seeks to hold the individual respondents guilty of violating § 1983 not because of any specific act or policy which they performed, adopted, or condoned but, rather, because they supposedly failed to exercise the ultimate oversight authority they possessed solely by virtue of their membership on the Authority's board. Not one allegation connects any individual respondent with actual knowledge of any wrongdoing. Instead, all allegations are predicated upon "constructive" knowledge, grounded in a statutory responsibility for acts of the Authority. The allegations in the complaint, even as amended, do not meet this Court's requirements for imposing liability

under § 1983. *Monell* v. *New York City Department of Social Services*, 436 U.S. 658, 691 (1979); *Rizzo* v. *Goode*, 423 U.S. 362 (1976). The only specific misdeed alleged is the failure of respondent Werblin to actually sign a standardized form certifying the relocation plan, even though the relocation plan had been approved by the appropriate state agency and was in actual fact effectuated. The District Court properly found that the certification requirement was merely an internal monitoring device designed to assist the state, not the relocatees, and that the omission did not give rise to a cause of action under § 1983. *United States* v. *Jiles*, 658 F.2d 194 (3d Cir. 1981), *cert. den.*, 455 U.S. 625 (1982).

In sum, the Third Circuit decision represents an appropriate treatment of the content of the allegations contained in the complaint viewed against the elements and burdens of proof applicable in cases arising under § 1983. The Third Circuit was correct in its conclusion that no cause of action exists. There is no reason for this Court to review that conclusion.

ARGUMENT

This Court should deny petitioner's request for a writ of certiorari because the courts below properly dismissed the complaint as failing to state a cause of action and because there exist no issues of public import or legal significance which warrant this Court's review.

In its amended complaint the petitioner, Blazer, does not aver any violation of a federal regulation or statute by any respondent. Nor is it contended that the respondents infringed any substantive Constitutional right. Blazer's argument is that the respondents somehow violated its due process and equal protection rights by allegedly failing to comply with various state relocation laws when they displaced Blazer in 1974. Moreover, the putative liability of the individual respondents is not de-

rived from any actual misdeed or knowing condonation of malevolent acts, but from their "constructive" knowledge and their ultimate responsibility as board members. Furthermore, all of the wrongful acts or omissions claimed by Blazer occurred while the condemnation and displacement action against Blazer was being heard in state courts. Though Blazer clearly could have and should have contested the relocation issues when it was a defendant in the state court in 1973 and 1974, it inexplicably waited six years to bring this purely state matter to a federal court.

Unfortunately for Blazer, the courts below recognized this suit for what it is: a fatuous effort to procure monies from a state entity for whatever miniscule infractions this petitioner could discover in its microscopic and tardy probe into the enormous and now successful project which has brought professional sports to New Jersey. The courts below scrutinized Blazer's complaint and found it totally lacking in substance under the standards applicable for suits under § 1983. In rendering the decisions below, the District Court and Third Circuit properly heeded the admonition that § 1983 is not to be misused as a catch-all by which a party runs to federal court to review any action of state officials. *Paul* v. *Davis*, 424 U.S. 693 (1976); *Sullivan* v. *Brown*, 544 F.2d 279, 284 (6th Cir. 1976).

From 1972 to 1974 the Authority carried out the Legislature's mandate to acquire acreage for the construction of a Sports Complex to serve the recreational needs of the citizens of New Jersey. Pursuant to the express provisions of the New Jersey Relocation Assistance Act of 1971, N.J.S.A. 20:4-11,[6] the Authority delegated the de-

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[6] N.J.S.A. 20:4-11 provides:

> "In order to prevent unnecessary expense and duplication of functions, and to promote uniform and effective administration of relocation assistance programs for displaced persons, the commissioner may authorize any taking agency to . . . carry out its functions under this act through any Federal or State agency or instrumentality having an established organization for conducting relocation assistance programs."

velopment and implementation of the requisite relocation plan and procedures to the DOT an agency experienced in relocation matters. The DOT devised and effectuated an extensive relocation plan, assigned four relocations officers to implement the plan, and acquired the designated properties in state court proceedings.

As part of the development of the Sports Complex, Blazer's facility was condemned and the money placed into a Superior Court Trust Fund. Upon Blazer's withdrawal of those monies on November 12, 1973, full title to their premises passed to the Authority, and Blazer remained only with the consent of the Authority. N.J.S.A. 20:3-19. A Court Order of November 12, 1973 specified the date of February 1, 1982 by which Blazer was to vacate the premises. That date was repeatedly extended by request of Blazer and with the written consent of the Authority until June 1974, when the Authority was advised by its engineers that any further postponement in Blazer's departure would entail enormous additional expenditures. Accordingly, the Authority returned to court to obtain yet another Order, establishing August 15, 1974 as the final date for vacation of the premises or the Sheriff would evict.

At no point during the relocation process or the condemnation proceedings in 1973 and 1974 did Blazer ever contest the validity of the relocation plan, the actions or inactions of relocation officers, or the notice of displacement. Rather, Blazer waited six years to cull through a myriad of state relocation rules existing in 1974 in an effort to discover some procedural flaw, no matter how irrelevant to Blazer itself. Believing that it found departures from full compliance with the state relocation rules, Blazer now asks the federal courts to compel state officials to make monetary absolution. However, the District Court properly dismissed this suit because Blazer has failed to allege any direct acts of, or participation in, wrongdoing by these state officials and because the

defects in the relocation plan claimed by Blazer, even if true, do not give rise to a cause of action under § 1983

Examination of the allegations against the individual respondents contained in the amended complaint and summarized in Blazer's petition reveals that the alleged culpability of the individual respondents is predicated upon the notion that as members of the Authority they have the ultimate responsibility and liability for every single misdeed or omission of every employee or agent of the Authority, even where the act or omission was committed by a separate state agency to whom the duty to carry out this relocation plan was properly delegated. Indeed, Blazer even seeks to impose liability on these respondents for having obtained court orders directing the displacement of Blazer. Utterly absent from the charges in the amended complaint is any claim that these respondents actually committed, participated in, or encouraged any acts of wrongdoing surrounding the development of a relocation plan and its application to Blazer. Apart from the failure of respondent Werblin to sign a form, which will be addressed later, all the allegations are founded on the proposition that government officials can be found liable under § 1983 for their failure to exercise ultimate supervisory authority over agents or employees of that governmental entity.

However, it is clear beyond cavil that a state official cannot be found liable under § 1983 absent a showing that he had, by his *own* direct conduct, denied federal rights belonging to another. *Rizzo* v. *Goode*, 423 U.S. 362, 370-371, 377 (1976) (emphasis in original). Governmental bodies, and their constituent members, may not be held liable simply because they employed a tortfeasor. *Monell* v. *New York City Department of Social Services*, 436 U.S. 658, 691 (1979). Simply stated, *respondeat superior* does not pertain in § 1983 actions. *Id.*, 436 U.S. at 691. Moreover, and significantly, a government official's failure to exercise his authority to prevent wrongdoing by those in his service is insufficient grounding

for guilt under § 1983. *Monell* v. *NYC Dep't of Soc. Services*, 436 at 694 n. 58; *Rizzo* v. *Goode*, 423 U.S. at 376; *Watson* v. *Interstate Fire & Casualty Company*, 611 F.2d 120, 123 (5th Cir. 1980).

In opposition to these well settled principles, Blazer relies upon *Naughton* v. *Bevilacqua*, 605 F.2d 586, 589 (1st Cir. 1979). That reliance is misplaced. In *Naughton* the Court of Appeals affirmed the trial court's dismissal of a suit against the Director of the Rhode Island Department of Mental Health because he could not be held liable for the unconstitutional conduct which occurred in the institutions he supervised. The plaintiff in *Naughton*, a patient in a state mental institution, sued, among others, the state's director of mental health institutions, who was empowered by statute with the duty to administer and supervise the operation of, and treatment in, those institutions. *Id.*, 605 F.2d at 588-589. The suit alleged that the institutions administered improper medication as as part of a deliberate plan of treatment. The trial court found that the allegations stated a substantive cause of action cognizable under § 1983, but dismissed the case against the director because there were no allegations that he played a "personal role" in the wrongdoings. The First Circuit affirmed the dismissal. While acknowledging that the director had the statutory duty to police the care of the patients in his agency's institutions, the court upheld the dismissal because "these stautory duties bear only the most tangential relationship to the focal point of this lawsuit: the quality and nature of [plaintiff's] day-to-day care at [the institution.]" *Id.*, 605 F.2d at 589. Emphasizing that the plan of treatment and acts of misconduct alleged were committed by members of the director's staff but not by the director himself, the court concluded that the director could not be found liable. *Id.*, 605 F.2d at 589-590. The factual and legal content of the instant case falls squarely within the rationale and ruling in *Naughton*.

In short, the courts below correctly concluded that the allegations in Blazer's complaint fail to allege acts or

omissions by these individual respondents which would suffice as a matter of law to hold them liable under § 1983. Thus, even without considering the merits and legal ramifications of the three defects in the relocation plan claimed by Blazer, no actionable liability can be imputed to these individual Authority members. In short, the courts below properly applied the correct legal precepts of liability in the § 1983 context. Contrary to Blazer's assertion, this case does not involve a novel or unique interpretation of *respondent superior*.

However, even assuming, *arguendo*, that the individual respondents may somehow be held personally liable under § 1983 for any procedural errors in the relocation plan devised and implemented by DOT, the procedural deficiencies claimed here do not give rise to a violation of a federal right actionable under § 1983. Blazer complains of four defects in the relocation process: (a) a lack of 90-day written notice, (b) failure to have an "eviction policy" in the plan (c) failure by respondent Werblin to sign a certification form, and (d) failure to inform Blazer of its right, under state statute, to apply for and receive payment of relocation monies prior to the relocation. None of these complaints has any merit.

As the District Court observed, on November 12, 1973 Blazer's owner and its attorney signed a Court Order agreeing to vacate the premises by February 1, 1974.[7] Clearly Blazer had written notice that it had to vacate its facility by a date certain: February 1, 1974: Furthermore, Blazer requested, and was granted, several extensions of time in which to vacate: the first extension was to May 1, 1974 and then to June 1, 1974. Each extension was made

[7] It is noteworthy that by the terms of that November Order, Blazer withdrew the $1,329,395 placed by the Authority in trust for the property. Under New Jersey condemnation law, withdrawal of those sums by the condemnee passes full title and right to possession to the condemnor. N.J.S.A. 20:3-19. Indeed, a condemnee who remains on the property more than 20 days after withdrawing the money is a trespassor. N.J.S.A. 20:3-19.

at the behest of Blazer, each was confirmed in writing, and each writing was embodied in a Court Order amending the original February 1, 1974 date to reflect a new date certain. Racanelli's call sheets unequivocally show that Benjamin Blazer and his attorney were well aware of the Court Orders and the various specific dates for displacement. The claim by Blazer that it was unlawfully denied proper written notice rings hollow.

Also vacuous is Blazer's assertion that the failure of the relocation plan to contain an "eviction policy" constitutes a violation of a federal right. Preliminarily, it is important to note that the requirement for an "eviction policy" is not contained in either the 1967 or the 1971 state relocation laws. Rather, the call for an eviction policy is found in regulations of the New Jersey Department of Community Affairs (R630 to R754). Those regulations set forth a general declaration that eviction should be used as a last resort and only for the reasons enumerated in the rules (R673). Included among those reasons is: "The eviction is required by judicial action." (R674). In this case the displacement was necessited by legislative mandate and carried out by judicial order. Simply stated, N.J.S.A. 5:10-6 directed the Authority to acquire the land at issue. Displacement of those persons on the land was not debatable, avoidable, or waivable; it was a legislative edict. Furthermore, acquisition of the designated properties was accomplished through state court proceedings under the state laws. All displacements occurred pursuant to judicial action and orders.

Moreover, looking at the substance of the "eviction policy" called for by the Community Affairs regulations, it is evident that the entire "policy" consists of the requirement that the relocation plan "inform all persons who are expected to be displaced by acquisition about the eviction policies to be pursued in carrying out the project" (R646). It is patently obvious that this requirement was in fact followed. As early as 1972 Blazer was informed that its property and buildings were to be acquired by the Au-

thority and that appraisers would be assessing its value. In March 1973, the Authority commenced condemnation proceedings in state court. Blazer participated in those proceedings and knew full well that it was being displaced, how it was being displaced, and when it was being displaced. It is simply incredulous that a party who withdraws condemnation funds in November 1973, thereby passing full title and right to possession to the Authority, and who signs an Order agreeing to vacate those premises by February 1, 1974, can subsequently claim that in August 1974 it was not aware of the Authority's displacement intentions. Under the facts of this case, and as a matter of law, the absence in the relocation plan of an "eviction policy" does not constitute the sort of actionable harm cognizable as a federal right. *Storer* v. *Brown*, 415 U.S. 724, 729-730 (1974); *United States* v. *Jiles*, 658 F.2d at 200; *Governor of Virgin Islands* v. *Berry*, 604 F.2d 221, 225 (3d Cir. 1979); *United Family Farmers, Inc.* v. *Kleppe*, 418 F. Supp. 592, 602-603 (D.S.D. 1976).[8]

The third procedural defect cited by Blazer, and the only allegation dealing with an action statutorily imposed upon a member of the Authority, concerns the failure of respondent Werblin to sign the certification form (R469) mandated by the 1967 relocation law. N.J.S.A. 52:31B-5. However, as the District Court properly ruled, this omission does not rise to the level of a constitutional tort.

The District Court explained that the DOT did develop and fully implement an extensive and complex relocation plan. A review of the plan (R480 to R567) and an examin-

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[8] Interestingly, the Community Affairs regulations were revised in 1979. N.J.A.C. 5:11-1*et seq.* The revised rules makes plain that the "eviction policy" requirements do not pertain to relocations made pursuant to the state relocation laws but, rather, apply to conduct of landlords under N.J.S.A. 2A:18-61.1. Thus the 1979 list of required elements of a Workable Relocation Assistance Plan (N.J.A.C. 5:11-6.1) does not mention eviction or eviction policy. Rather, the only reference to eviction in the 1979 regulations is in conjunction with N.J.S.A. 2A:18-61.1, which concerns removal of residential tenants.

ation of the affidavits and call sheets of Racanelli leave no room for doubt that the relocation plan was implemented. In light of the actual implementation of the plan, the failure of respondent Werblin to sign a form simply does not represent the sort of omission which gives rise to a cause of action under § 1983. As the Third Circuit recently declared:

> "Not all violations of state laws rise to the level of constitutional error . . . [Citations omitted]. In determining whether the violation of a particular state law deprived a defendant of his due process rights under the fifth amendment, we must ascertain whether the state law directly conferred a substantive right on the defendant or merely created an administrative plan to help the state regulate its officers' conduct. *Slotnick* v. *Staviskey,* 560 F.2d 31, 34 (1st Cir. 1974), *cert. denied,* 434 U.S. 1077, 98 S.Ct. 1286, 55 L.Ed.2d 783 (1978) ('The simple fact that state law prescribes certain procedures does not mean that the procedures thereby require a federal constitutional dimension.') See also *Screws,* 325 U.S. at 108, 65 S.Ct. at 1038; *Street* v. *Surdyka,* 492 F.2d 368 (4th Cir. 1974)."

United States v. *Jiles,* 658 F.2d at 200. Only where the safeguard contained in the state law confers a property or liberty right does due process protection exist. *Id.* While the factual context of the *Jiles* decision was a criminal proceeding, its sound reasoning has been applied in a purely civil setting. *King* v. *Hilton,* 525 F. Supp. 1192, 1198 (D.N.J. 1981).

The requirement of signing a form certifying that a relocation plan has been developed is a procedural safeguard which does not confer a due process right upon Blazer. As the District Court explained:

> "The DCA forms 101 and 102 are the same kind of procedural safeguard as was at issue in *Jiles.* There can be no doubt that a WRAP was promul-

gated by DOT under contract to the Authority, and that it was implemented to some degree at least. The WRAP was submitted to the Commissioner of DCA pursuant to the Acts who found that 'the manner in which you propose to relocate persons displaced and the resources available for their relocation comply with the requirements of the Relocation Assistance Law of 1971 and the regulations promulgated thereunder.' See letter from Commissioner Kramer to James Hyde, dated July 20th, 1973. The Commissioner concluded the letter by saying that the approval of the WRAP is contingent on the submission of these forms.

"For summary judgment purposes, the evidence does not show that the forms were ever submitted. However, I do not find that plaintiff had a property interest in this safeguard. It was the intention of the Acts that relocation of plaintiff proceed pursuant to a WRAP, but one was prepared for the Authority and implemented. The signature of Defendant Werblin on these forms can only be deemed part of 'an administrative plan to help the state regulate its officers conduct.' See *Jiles* at page 200.

"To say that but for these forms, the field officers would have properly informed plaintiff of its rights under the Acts and but for this plaintiff would not have been unprepared financially and physically to relocate is to travel down the same supervisory road covered before.

"I find that the Defendant Werblin did not commit a constitutional tort." (R952 to R954).

Under the facts of this case, the failure of respondent Werblin to certify the forms does not nullify the plan and does not render him, or any Authority member, liable to this petitioner under § 1983. *Storer* v. *Brown*; *United States* v. *Jiles; King* v. *Hilton, supra.*

Consequently, even assuming the existence of the defects in the relocation plan claimed by Blazer, it is clear that they do not give rise to a violation of a federal right remediable in a § 1983 action. The District Court was eminently correct in dismissing this case against the individuals for failure to allege actionable wrongdoing by them.

Similarly meritless is Blazer's assertion that it was denied payment of relocation funds as a "condition precedent" to its actual relocation. To be sure, the relocation statute does provide for advance payment of funds. N.J.S.A. 20:4-10(a)(2). However, as that statute unambiguously states, advance payment will only be made upon "proper application by the displacee." N.J.S.A. 30:4-10(a)(2). It is uncontroverted that Blazer never made application for advance payments. The federal courts, construing an identical provision in the essentially similar federal relocation law (42 U.S.C. § 4622), repeatedly ruled that a displacee who fails to apply for advance relocation payment cannot be deemed to have been unlawfully denied those benefits. *Boston* v. *United States,* 424 F. Supp. 259, 266 (E.D. Mo. 1976); *Smith* v. *City of Cookeville,* 281 F. Supp. 100, 106 (MD. Tenn. 1974.[9]

From all of the foregoing it is plain that these individual respondents are not liable under § 1983 since they did not directly commit or participate in any of the putative wrongdoings. Moreover, even if the procedural flaws in the relocation process implemented by DOT can be legally

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[9] In its petition, and in the proceedings below, Blazer complains that the respondents never expressly informed it that it had the right to apply for advance relocation payment. However, Blazer has never explained why it own attorneys failed to exercise a right provided to it by statute. In oral argument in District Court, Blazer's attorney, asserting that an 11-year old child could read the relocation statute, becried the inability of the Authority's attorneys to comprehend that statute. The Judge then inquired as to the age of Blazer's attorneys and asked why they failed to invoke Blazer's statutory rights when the relocation process was occurring (R788 to R790).

imputed to these respondents (and they can not), those defects do not give rise to a cause of action under § 1983.

Though the District Court concentrated its attention on the inapplicability of the doctrine of *respondeat superior* in a §1983 case and on the fact that the violations alleged do not constitute an actionable wrong under § 1983, another related but independent reason exists which bars this suit under § 1983.

It is well settled that in order for a cause of action to accrue under § 1983, the plaintiff must establish that the defendant contravened a right secured by a federal statute or the federal Constitution. *Maine* v. *Thiboutet*, 448 U.S. 1, 4-5 (1980); *Owen* v. *City of Independence*, 445 U.S. 622, 636 (1980); *Monell* v. *N.Y.C. Dep't of Soc. Services*, 436 U.S. at 700-701. Jurisdiction does not lie under § 1983 where a violation of only state laws is alleged or proven. *Paul* v. *Davis*, 424 U.S. at 698-699; *Crocker* v. *Hayes*, 616 F.2d 237, 240 (5th Cir. 1980); *Tucker* v. *Duncan*, 499 F.2d 963, 965 n. 1 (4th Cir. 1974); *Karr* v. *Bloy*, 413 F. Supp. 579, 584 (N.D. Ohio 1976). As the federal court in Ohio summarized:

> "Since jurisdiction of the action lies under [§ 1983], the Court has authority only to review state action that allegedly deprives plaintiff of a federal right. Whether state officers have obeyed state statutes presents an issue of a state right not a federal right. A state official may act unlawfully under state law without thereby violating the Constitution . . . State courts are the proper forum in which to raise issues of compliance with these state laws."

Karr v. *Bloy*, 413 F. Supp. at 584.

The Sports Complex was completed without any federal funding or involvement. Though Blazer originally alleged a violation of the federal Uniform Relocation Act, it has

dropped that charge in its amended complaint.[10] Accordingly, no issue of a violation of federal statutory rights obtains. Rather, the issue here is whether the infringements of state relocation laws which allegedly transpired here infringed Blazer's rights under the United States Constitution.

There is, however, no constitutional right to relocation assistance. *United States* v. *Westinghouse Elec. & Mfg.*, 339 U.S. 261, 264 (1950) ("property" for purposes of Fifth Amendment does not include "expenses of removal or of relocation"); *United States* v. *General Motors Corp.*, 323 U.S. 373, 377-379 (1946). (the expense of moving removable fixtures and personal property from premises following condemnation is not covered by Fifth Amendment); *Mitchell* v. *United States*, 267 U.S. 341, 345 (1924); *Monogahela Navigation Co.* v. *United States*, 148 U.S. 312 (1893); *R. J. Widen Co.* v. *United States*, 357 F.2d 988 (Ct. of Cl. 1966); *Wahn Chang Corp.* v. *United States*, 282 F.2d 728, 735-736 (Ct. of Cl. 1960); *State* v. *Gallant*, 42 N.J. 583, 587-588, 202 A.2d 401 (1964) ("Our courts have also held that the fee owner is generally not entitled to compensation for personalty abandoned in the condemned premises nor for the expenses of removing personalty. [citations omitted]. Moving expenses in connection with the condemnation of leasehold interests have as well been disallowed [citations omitted];" *State Commissioner of Transportation* v. *Cooper Alloy Corp.*, 136 N.J. Super. 560, 568, 347 A.2d 365 (App. Div. 1975). Thus, even if Blazer was denied, or hin-

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[10] Blazer had contended that the respondents violated the federal Uniform Relocation Act of 1970, 42 U.S.C. 4601. (R18). However, discovery revealed that the Sports Complex was developed and constructed without federal funding, thereby rendering the federal relocation laws irrelevant. Accordingly, Blazer dropped its claim of violation of the federal relocation laws. See Amended Complaint (R830 to R875).

dered in obtaining, relocation assistance, that does not give rise to a claim of constitutional dimension.[11]

Finally, Blazer alleges in its petition (Pb7) that the respondents violated its right to the equal protection of the laws as guaranteed by the Fourteenth Amendment. However, and significantly, the petition is barren of any argument concerning that contention. That absence is hardly surprising. In order to establish a violation of equal protection rights by government officials, a plaintiff must show that the officials acted intentionally and invidiously in treating one class differently than a similarly situated class. *Washington* v. *Davis*, 426 U.S. 229 (1976); *Griffen* v. *Beckenridge*, 403 U.S. 88, 102 (1971). In this case there is nothing in the complaint, other than one bald-faced assertion that the individual respondents acted wantonly, which would even support the notion that these respondents acted with malevolent deliberation. On the contrary, the core of the petitioner's charges against the individual respondents is that they are passively liable because of their ultimate, statutorily-based responsibility for the acts of the Authority's agents. Moreover, the complaint utterly fails to indicate what classes were created and affected by the respondent's conduct or how the petitioner was treated differently than any other displacee. Again, the reason for the lack of this essential material is not difficult to discern. The fact is, the alleged defects in the relocation plan were systemic in nature, thereby affecting everyone equally.

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[11] In its petition Blazer also asserts as a basis for granting certiorari the need for the Court to clarify its recent "due process" decision in *Parratt* v. *Taylor*, 451 U.S. 527 (1981). Interestingly, the putative need for clarification derives not from any statement by any of the courts below but, rather, from the fact that the respondents had argued in their briefs that the reasoning in *Parratt* provided an additional basis for dismissing Blazer's suit. However, that argument was never adopted by either court below, was never an element in the decisions granting summary judgment, and should not cause this Court to undertake the clarification urged by Blazer. *Owens* v. *Union Pacific R.R. Co.*, 319 U.S. 715, 724-725 (1942).

If, as Blazer avers, the relocation plan was deficient because it did not contain an eviction policy or because it was not certified by Werblin or because it did not (or mistakenly) informed persons of their rights under the relocation laws, then these deficiencies infected the entire relocation process. Because of the utter absence of any supportable assertion that the respondents acted with invidious intention to harm this petitioner, and because of the absence of any differential treatment based upon some sort of classification, Blazer's equal protection claim lacks any merit.

In sum, the courts below correctly applied traditional precepts of law in properly determining that Blazer's complaint, even as amended, did not state a cause of action under § 1983. Nothing in those decisions warrants review by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that this Court should deny Blazer's petition for a writ of certiorari.

Respectfully submitted,

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